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In the Supreme Court of the United States

OCTOBER TERM, 1991

VELMA MARTIN, ET AL., PETITIONERS

v.

LOUIS W. SULLIVAN, SECRETARY
OF HEALTH AND HUMAN SERVICES

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether a regulation providing that benefits from other programs that are being withheld to recover overpayments shall be considered "income" to the beneficiary for purposes of computing eligibility for Supplemental Security Income benefits is consistent with 42 U.S.C. 1382a(a)(2)(B), which defines income to include "any payments received as a[] * * * retirement * * * benefit."



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OPINIONS BELOW

The amended opinion of the court of appeals (Pet. App. 1a-12a) is reported at 932 F.2d 1273. The opinion of the district court (Pet. App. 20a-36a) is reported at 694 F. Supp. 718.

JURISDICTION

The judgment of the court of appeals was entered on August 31, 1990, and amended on May 14, 1991. A petition for rehearing with suggestion for rehearing en banc was denied on June 24, 1991 (Pet. App. 37a). The petition for a writ of certiorari was filed on

September 19, 1991. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In January 1987, petitioner Martin filed an application for Supplemental Security Income (SSI) benefits based on age under Title XVI of the Social Security Act, 42 U.S.C. 1381 *et seq.* Pet. App. 2a. That application was denied at all administrative levels because Martin was found to have unearned income that exceeded the limitation for SSI eligibility. *Id.* at 2a-3a.

The record established that Martin was receiving \$386 per month in Social Security retirement insurance benefits. She also was entitled to a monthly railroad retirement benefit of \$268.16, which was being withheld in full by the United States Railroad Retirement Board (RRB) to recoup an overpayment of retirement benefits Martin previously had received because she had neglected to report other income. Pet. App. 2a.¹ In evaluating Martin's application for SSI benefits, the Secretary of HHS applied a regulation, 20 C.F.R. 416.1123(b)(1),² that includes as "income" to an SSI claimant any amounts that are

¹ Martin had requested the RRB to waive recovery of the overpayment, but her request was denied because she was deemed to be at fault in causing the overpayment. Pet. App. 2a, 21a.

² Section 416.1123 provides, in pertinent part:

(b) *Amount considered as income.* We may include more or less of your unearned income than you actually receive.

(1) We include more than you actually receive where another benefit payment * * * has been reduced to recover a previous overpayment. You are repaying a legal obligation through the withholding of portions of your benefit amount, and the amount of your debt reduction is also part of your unearned income. * * *

withheld from other benefit payments to recover past overpayments. In accordance with the regulation, the Secretary treated the full amount of Martin's railroad retirement benefits as income to her. Pet. App. 2a-3a. As a result, Martin had a monthly income in excess of the limit for SSI eligibility. *Id.* at 2a.

2. Martin brought this action pursuant to 42 U.S.C. 405(g) and 1383(c)(3), seeking judicial review of the Secretary's final decision that she was not entitled to benefits. She moved for summary judgment, arguing that 20 C.F.R. 416.1123(b)(1) is inconsistent with the Social Security Act, and, alternatively, that the regulation violates her constitutional right to equal protection. Pet. App. 3a.

The district court granted Martin's motion for summary judgment, holding that 20 C.F.R. 416.1123(b)(1) is invalid under the Social Security Act. Pet. App. 20a-36a.³ The court rejected the holdings of the two courts of appeals that previously had upheld the regulation, *id.* at 23a-24a & n.2, and ruled that, under 42 U.S.C. 1382a(a)(2)(B), only benefit amounts actually received in hand may be counted as "income" for purposes of determining eligibility for SSI benefits.

In the court's view, money must be "actually available" to meet basic needs for food, clothing, and shelter to be considered income within the meaning of the statute. Pet. App. 27a-28a. The court also believed that the regulation is inconsistent with the intent of

³ The court also granted Martin's motion for class certification, certifying a class consisting of "all persons residing in the Ninth Circuit 'whose SSI benefits have been, are being, or will be denied, terminated, or reduced' because of the constructive receipt regulation." Pet. App. 35a. The Secretary appealed the class certification order, *id.* at 3a, but the court of appeals did not reach that issue.

Congress in enacting the SSI program because it leaves some SSI claimants with substantially less than the “guaranteed monthly income” for which Congress provided in the SSI program. *Id.* at 29a-31a. Finally, the court decided that the availability of reduced withholding under the RRB and other benefit programs (which might alleviate the “harsh effects of the Secretary’s [SSI] regulation,” *id.* at 33a) did not save the regulation, since the Secretary had not shown that *all* public and private benefit programs permit reduced withholding. *Id.* at 31a-34a.⁴

3. On the Secretary’s appeal, the court of appeals vacated the district court’s judgment and remanded for further proceedings. Pet. App. 1a-12a.⁵ The court noted that the district court’s analysis was at odds with the reasoning of the four courts of appeals that had considered the issue, all of which had resolved it in the Secretary’s favor. *Id.* at 4a (citing *Lyon v. Bowen*, 802 F.2d 794 (5th Cir. 1986); *Robinson v. Bowen*, 828 F.2d 71 (2d Cir. 1987); *Szlosek v. Secretary of Health & Human Services*, 861 F.2d 13 (1st Cir. 1988) (per curiam); and *Healea v. Bowen*, 871 F.2d 48 (7th Cir. 1989)). At the same time, the court distinguished the various Ninth Circuit cases upon which petitioners relied—none of which involved the withholding of benefit payments to recover past overpayments—and concluded that they “do not create a broad ‘actual availability’ principle that is to be applied to every case determining what constitutes

⁴ Because the court ruled that the regulation violates the Social Security Act, it did not reach the equal protection argument. Pet. App. 35a n.7.

⁵ The court of appeals initially issued an opinion on August 31, 1990. Pet. App. 13a-19a. On petition for rehearing, the court issued an amended opinion on May 14, 1991. *Id.* at 1a-12a. All references in this brief are to the latter opinion.

‘income’ for purposes of SSI benefits.” Pet. App. 9a; see *id.* at 4a-9a. The court stated that “[a]fter reviewing the provision in the context of the entire statutory scheme,” it “agree[d] with the other circuits that the more plausible construction of § 1382a(a)(2)(B) is that which rejects an actual receipt requirement.” *Id.* at 10a.

The court of appeals further rejected petitioners’ argument that, because Congress limited the rate of recovery of overpaid SSI benefits to ten percent of the debtor’s monthly SSI payments, Congress must also have intended to limit the extent to which the withholding of benefits to recover overpayments under *other* benefit programs could affect the amount of SSI benefits an individual receives. Pet. App. 11a. The court noted that, if such a limitation were adopted, “SSI funds will be used to partially subsidize a claimant’s debt to an outside program.” *Ibid.* The court also reasoned that “[h]ad Congress intended to impose restrictions on the [Secretary’s] ability to count as income monies being withheld regardless of the benefit program involved, * * * Congress would have made its mandate more explicit.” *Id.* at 11a-12a (emphasis omitted).

The court further “[f]ound to be without merit [petitioners’] assertion that the Secretary’s regulation should be invalidated simply because not all of the programs potentially affected by it clearly provide for reduced withholding.” *Id.* at 12a. In the court’s view, it is sufficient for purposes of this case that the RRB has such a policy and that Martin had been offered the option of reduced withholding of her railroad retirement overpayments. *Ibid.* If that policy is not applied in other situations, the court reasoned, the matter should first be the subject of administrative consideration. *Ibid.*

ARGUMENT

The decision of the court of appeals is correct and is consistent with the decisions of this Court and of the four other courts of appeals that have addressed this issue. Accordingly, further review is unwarranted.

1. Contrary to petitioners' contention (Pet. 9-11), the court of appeals' ruling does not conflict with the decisions in *Philbrook v. Glodgett*, 421 U.S. 707 (1975), and *Wasservogel v. Blum*, 429 N.E.2d 131 (1981). Those cases did not involve the statutory and regulatory scheme at issue here, and they are readily distinguishable from this case.

a. *Philbrook* concerned a State's application of a federal statutory requirement that state plans for participation in the Aid to Families with Dependent Children (AFDC) program deny benefits to children of unemployed fathers "with respect to any week for which such child's father receives unemployment compensation." 471 U.S. 711. The Court held that the statutory phrase "receives unemployment compensation" did not apply to fathers who are merely "eligible for" unemployment compensation, but only to those who are actually being paid the compensation. *Id.* at 713.

In contrast with this case, the issue in *Philbrook* was not whether benefits for which a beneficiary has applied, and which have been awarded, are to be regarded as "received" by the beneficiary when they are withheld to repay a debt owed by the beneficiary. The plaintiffs in *Philbrook* had not even applied for unemployment compensation. Here, petitioner Martin, in comparison, is not merely "eligible" for RRB benefits in the abstract; she has been determined to be entitled to those benefits, and she also receives a clear economic benefit from the diversion of her retirement

benefits to liquidate her debt to the RRB program. *Philbrook* therefore sheds no light on this case.

Moreover, the suggestion, implicit in petitioners' reliance on *Philbrook*, that the federal AFDC program incorporates a strict receipt-in-hand principle for calculating income is belied by this Court's decision in *Heckler v. Turner*, 470 U.S. 184 (1985). In *Turner*, the Court interpreted the definition of "income" in the AFDC title of the Social Security Act to require that the amount withheld for taxes through mandatory payroll deductions, although never received in hand to meet basic living expenses, be considered as "income" for purposes of determining a family's eligibility for AFDC benefits. 470 U.S. at 194. In so deciding, the Court made clear that the principle of "actual availability" of income that is to be counted in determining eligibility excludes only "fictitious" or "imputed" sources of funds, *id.* at 200, and does not require exclusion of "mandatory payroll withholdings and other standard work expenses" that "render a portion of a wage earner's income unavailable to meet the recipient family's needs," *id.* at 202. See also *Lukhard v. Reed*, 481 U.S. 368, 375 (1987) (plurality opinion).

Thus, the parallel statutory provisions governing the AFDC program to which petitioners refer strongly reinforce the conclusion that the term "income," as used in determining eligibility under the Social Security Act's needs-based programs, means *gross* income, and includes amounts deducted to meet the beneficiary's legal obligations.

b. The question in *Wasservogel v. Blum*, *supra*, was whether SSI payments "withheld by the Federal Government to recoup overpayments made because of its error" should be counted as income for the purpose of determining eligibility for home relief bene-

fits under state law. The New York statute at issue provided that a person “who is receiving” federal SSI benefits would not be eligible for the state benefits. To be sure, the issue in *Wasservogel* is similar to the question here, in that the state court was called upon to decide whether benefit amounts withheld to recoup an overpayment should be regarded as “received by” a claimant for purposes of eligibility for other payments. Despite the ~~state~~ court’s answer in the negative, however, there is no conflict with the decision in this case.

First, and most obviously, *Wasservogel* concerned entitlement to home relief under the New York Social Services Law, not to SSI benefits under the Social Security Act. Second, the court in *Wasservogel* relied not only on “the wording of the [state statutory] sections referred to,” but also “the regulations governing eligibility.” Those regulations provided that the income and resources considered in determining eligibility for home relief must be “available” in the sense of being received in hand for use by the claimant in meeting his needs. *Wasservogel*, 429 N.E.2d at 133. Moreover, as petitioner concedes (Pet. 11 n.3), the state statute’s predecessor was deliberately revised for the purpose of incorporating that requirement, 429 N.E.2d at 132 n.3. In contrast, the regulation at issue here rejects any receipt-in-hand requirement by making clear that benefits withheld to repay an overpayment *are* to be considered income to the claimant under the SSI statute. That regulation, which is consistent with this Court’s analysis of the issue in *Heckler v. Turner*, represents the authoritative construction of the Act by the agency charged with its administration. This construction is entitled to great deference. *Cherron U.S.A. Inc. v.*

Natural Resources Defense Council, Inc., 467 U.S. 837 (1984).

2. Relying on familiar principles of statutory construction, petitioner next argues (Pet. 11-17) that the amount of benefits withheld to recover past overpayments should be excluded in determining eligibility because the plain meaning of the term "received" in 42 U.S.C. 1382a(a)(2)(B) is "received in hand." Recitation of unexceptionable general principles of construction, however, does not advance petitioners' cause in the least. In the first place, the ultimate issue here is whether the amounts withheld to repay past overpayments to an individual should be treated as "income" to the individual. The Act broadly provides that "income means both earned and unearned income." 42 U.S.C. 1382a(a). Nothing in this all-inclusive language suggests that amounts withheld from the actual payment of income to meet other obligations are not to be regarded as income. Section 1382a(a)(1) and (2) then proceed to define earned and unearned income, defining the former to mean only wages and certain specified items, and the latter to mean "all other income, including" specified examples, such as payments received under benefit programs. The express inclusion of "all" income refutes petitioners' claim for an exclusion of those amounts of income that are withheld to repay debts, whether to other benefit programs or private parties.

In any event, the term "received" is inherently ambiguous—receipt can be actual or constructive. A benefit does not have to be received in hand by the beneficiary to be "received" for purposes of SSI eligibility; a benefit that is applied to reduce a beneficiary's debt is also "received" in the relevant sense. The narrower meaning of the word "received" is illustrated by the regulation at issue. Section

416.1123(b) states that the Secretary will sometimes consider "more or less of your unearned income than you actually receive."

3. On remand from the court of appeals, the district court, on October 30, 1991, considered and rejected petitioners' equal protection argument and granted respondent's motion to dismiss. Petitioners filed a motion to alter or amend the judgment, under Fed. R. Civ. P. 59, on November 8, 1991.

On November 12, 1991, petitioners filed a motion with this Court to defer ruling on the certiorari petition because of the pending motion for reconsideration by the district court. With regard to this motion, we note that, if the Court denies the petition for certiorari at this juncture, and if petitioners elect to pursue any adverse rulings by the lower courts on the equal protection issue, petitioners will have another opportunity to present all the issues arising in this case in a subsequent petition to this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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